

2
3
4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Michael Lee Beitman,
10 Plaintiff,
11 v.
12 Correct Care Solutions, et al.,
13 Defendants.
14
15

No. CV 17-03829-PHX-JAT (DMF)

ORDER

16 Plaintiff Michael Lee Beitman,¹ who is confined in the Arizona State Prison
17 Complex-Florence, South Unit, brought this pro se civil rights action under 42 U.S.C.
18 § 1983 against Correct Care Solutions (CCS), CCS employee Dr. Martin Gruenberg,
19 Arizona Department of Corrections (ADC) Director Charles Ryan, and Corizon Health
20 Inc. (Doc. 7.)² Before the Court is the Motion for Summary Judgment filed by CCS and
21 Dr. Gruenberg, which Ryan and Corizon joined. (Docs. 103, 140.)³ The Court will deny
22 the Motion for Summary Judgment.

23
24 ¹ The case caption reads “Michael Lee Beitman” as that is how Beitman listed his
25 name in the original complaint. (Doc. 1). Apparently, Beitman’s name is “Lee Michael
Beitman.” (Doc. 7-1 at 10.) Beitman must file a motion requesting to amend the case
caption if he would like the caption to list his correct name.

26 ² CCS is the private medical provider contracted to provide medical services at the
27 Central Arizona Correctional Facility, a private prison in Florence, Arizona that is
operated by the GEO Group. (Doc. 104 ¶ 2; Doc. 128 ¶ 5.) Corizon is the private medical
provider formerly contracted to provide medical services at ADC facilities.

28 ³ Upon the filing of Defendants’ Motion, the Court issued an order with the notice
required under *Rand v. Rowland*, 154 F.3d 952, 962 (9th Cir. 1999) (en banc), which

1 **I. BACKGROUND**

2 Beitman alleges that on February 3, 2015, he was assaulted by other prisoners and
3 suffered a concussion and fractures to his face and ribs. (Doc. 7-1 at 2 ¶¶ 1–2.) Beitman
4 claims that Dr. Gruenberg refused to send him to the hospital for treatment, and, although
5 x-rays were ultimately taken, Beitman was told there were no fractures despite Beitman’s
6 claims that his bones “would undue and grind.” (*Id.* at 2–3 ¶¶ 5, 8, 10, 19.) Beitman states
7 that a year later, on February 1, 2016, he was assaulted at a different facility, and his right
8 cheekbone and jaw were fractured. (*Id.* at 5 ¶ 24.) Beitman claims that he again did not
9 receive specialist treatment or proper follow-up care. (*Id.* ¶¶ 27–29.) Beitman was then
10 transferred to the Eyman Complex, where he filed a grievance regarding his claims about
11 the lack of treatment, but he was denied any further medical treatment. (*Id.* at 5–6 ¶¶ 30,
12 32, 34.) Beitman sued for declaratory relief, damages, and injunctive relief in the form of
13 medical treatment to repair damage to his face. (Doc. 7 at 7.)

14 Upon screening, the Court determined that Beitman sufficiently stated Eighth
15 Amendment claims against Dr. Gruenberg, CCS, Ryan, and Corizon for failure to treat
16 Beitman’s injuries, failure to provide follow-up care, and failure to act to remedy the lack
17 of treatment. (Doc. 8.)⁴

18 Dr. Gruenberg and CCS filed a Motion for Summary Judgment arguing that
19 Beitman cannot show he suffered any fractures in the February 3, 2015 altercation and,
20 because there were no fractures, neither Dr. Gruenberg nor CCS can be liable for failing
21 to treat non-existent conditions. (Doc. 103 at 4.) They further argue that Dr. Gruenberg
22 saw Beitman and sent him for x-rays, and thereafter relied on the x-ray results; thus, there

23 informed Beitman of the summary judgment requirements under Federal Rule of Civil
24 Procedure 56. (Doc. 109.)

25 ⁴ The Court recognizes a claim against Ryan in his individual capacity as a
26 supervisor as well as a claim against Ryan in his official capacity as Director of the ADC
27 because Beitman is seeking injunctive relief in the form of “medical treatment to re-
28 fracture and repair the damage to [Beitman]’s face.” (Doc. 7 at 6–7); *see Will v. Mich.*
Dep’t of State Police, 491 U.S. 58, 71 (1989) (holding that state officials can be sued in
their official capacity for injunctive relief); Ariz. Rev. Stat. Ann. § 31-201.01(D)
(providing the ADC Director bears ultimate responsibility for the provision of medical
care for Arizona prisoners).

1 was no failure to respond to a medical need sufficient to constitute deliberate
2 indifference. (*Id.* at 4–5.) Ryan and Corizon joined the Motion for Summary Judgment.
3 (Doc. 131; Doc. 140.)⁵

4 **II. SUMMARY JUDGMENT STANDARD**

5 A court must grant summary judgment “if the movant shows that there is no
6 genuine dispute as to any material fact and the movant is entitled to judgment as a matter
7 of law.” Fed. R. Civ. P. 56(a); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23
8 (1986). The movant bears the initial responsibility of presenting the basis for its motion
9 and identifying those portions of the record, together with affidavits, if any, that it
10 believes demonstrate the absence of a genuine issue of material fact. *Celotex*, 477 U.S. at
11 323.

12 If the movant fails to carry its initial burden of production, the nonmovant need
13 not produce anything. *Nissan Fire & Marine Ins. v. Fritz Co.*, 210 F.3d 1099, 1102–03
14 (9th Cir. 2000). But if the movant meets its initial responsibility, the burden then shifts to
15 the nonmovant to demonstrate the existence of a factual dispute and that the fact in
16 contention is material, i.e., a fact that might affect the outcome of the suit under the
17 governing law, and that the dispute is genuine, i.e., the evidence is such that a reasonable
18 jury could return a verdict for the nonmovant. *Anderson v. Liberty Lobby, Inc.*, 477 U.S.
19 242, 249–51 (1986); *see Triton Energy Corp. v. Square D. Co.*, 68 F.3d 1216, 1221 (9th
20 Cir. 1995). The nonmovant need not establish a material issue of fact conclusively in its
21 favor, *First Nat’l Bank of Ariz. v. Cities Serv. Co.*, 391 U.S. 253, 288–89 (1968);
22 however, it must “come forward with specific facts showing that there is a *genuine issue*
23 *for trial.*” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986)
24 (internal quotation marks and citation omitted); *see* Fed. R. Civ. P. 56(c)(1).

25
26
27 ⁵ Ryan and Corizon failed to file a summary judgment motion, and the Court
28 denied their request to file a summary judgment motion three months after the deadline.
(Docs. 131, 140.) But the Court granted Ryan and Corizon leave to join CCS and
Gruenberg’s Motion for Summary Judgment. (Doc. 140.)

1 At summary judgment, the judge’s function is not to weigh the evidence and
2 determine the truth but to determine whether there is a genuine issue for trial. *Anderson*,
3 477 U.S. at 249. The court does not make credibility determinations on summary
4 judgment, and it must draw all inferences in the nonmovant’s favor. *Id.* at 255;
5 *Soremekun v. Thrifty Payless, Inc.*, 509 F.3d 978, 984 (9th Cir. 2007). The court need
6 consider only the cited materials, but it may consider any other materials in the record.
7 Fed. R. Civ. P. 56(c)(3). Further, where the nonmovant is pro se, the court must consider
8 as evidence in opposition to summary judgment all of the pro se litigant’s contentions
9 that are based on personal knowledge and that are set forth in verified pleadings and
10 motions. *Jones v. Blanas*, 393 F.3d 918, 923 (9th Cir. 2004); *see Schroeder v. McDonald*,
11 55 F.3d 454, 460 (9th Cir. 1995).

12 **III. RELEVANT FACTS**

13 **A. Central Arizona Correctional Facility**

14 In February 2015, Beitman, who is in the custody of the ADC, was housed at the
15 Central Arizona Correctional Facility in Florence, Arizona. (Doc. 128 ¶ 3.) On the
16 morning of February 3, 2015, Beitman states that three other prisoners hit him in the head
17 and kicked him in the ribs. (Doc. 129 ¶ 3.) Beitman alleges he suffered injuries to his face
18 and chest as a result. (*Id.*) Shortly after the assault, Beitman claims a correctional officer
19 found Beitman in the shower and brought him to the prison medical facility. (*Id.* ¶ 4.)

20 Beitman asserts he was seen by Nurse Practitioner Ramirez. (Doc. 129 ¶ 9.)
21 Beitman claims that he was bleeding out of his nose and down his throat, that it felt like
22 the side of his face was crushed, and that he could feel his cheekbone moving and
23 crunching when he touched the side of his face. (*Id.*) He also states he was dizzy,
24 nauseous, and confused. (*Id.*) Beitman states he reported to NP Ramirez that he had
25 difficulty breathing due to the injuries to his ribs on the left side, and he could feel one or
26 two of his ribs “pop and click with a sharp pain” every time he took a breath. (*Id.* ¶ 10.)

27 Beitman asserts that he was in severe pain and that he told NP Ramirez that he had
28 a broken cheekbone and broken ribs and that he wanted to go to the hospital for x-rays, a

1 CT scan, and specialist treatment. (*Id.*) According to Beitman, NP Ramirez pushed a
2 finger into Beitman's cheekbone, which made it move and crunch and caused Beitman to
3 yell out in pain. (*Id.* ¶ 11.) Beitman claims that NP Ramirez said that the bone might be
4 broken. (*Id.*) Beitman states that Ramirez then pushed fingers against Beitman's ribs and
5 felt a pop and click when he took a breath. (*Id.*) Beitman asserts NP Ramirez said a rib
6 might be broken or dislocated but that there is no treatment. (*Id.*) Beitman claims that NP
7 Ramirez then said x-rays would be taken in two days after the swelling decreased. (*Id.*) In
8 the medical record, NP Ramirez noted that Beitman had left eye orbital ecchymosis (skin
9 discoloration from bleeding underneath) and lower rib tenderness. (Doc. 104-1 at 6.) NP
10 Ramirez provided Beitman Ibuprofen for pain and then placed Beitman in the Central
11 Detention Unit. (*Id.*; Doc. 129 ¶ 12.)

12 The medical record includes an entry by a nurse that is dated February 4, 2015,
13 and states "[l]eft eye orbital series tomorrow to xray." (Doc. 104-1 at 6.) Dr. Gruenberg
14 approved the referral to radiology for the x-rays that same day. (*Id.* at 2 ¶ 9; *see also id.* at
15 6.) Beitman avers that on February 5, 2015, he was taken to medical to get x-rays from a
16 portable x-ray machine. (Doc. 129 ¶ 19.) Beitman asked that an x-ray also be taken of his
17 ribs, but he claims he was told there was no order for a rib x-ray. (*Id.*)

18 Defendants submit a medical record, dated February 5, 2015, but with no time
19 documented, which appears to show that Beitman was examined that day, with vitals
20 listed, objective notes, and an assessment of "orbit contusion" and "rib pain." (Doc. 104-
21 1 at 7.) This medical record includes a notation that "orbit series wnl [within normal
22 limits]," and it documents a plan for "left rib series with CXR PA/LAT [chest x-rays
23 posterior-anterior view/lateral view]." (*Id.*) Next to this entry for chest x-rays, it states
24 "ord[er] for 2/12." (*Id.*) This medical record is stamped and initialed by Nurses Sanchez
25 and Sylvia and by Dr. Gruenberg. (*Id.*) But Beitman claims he was not examined on
26 February 5, 2015; Beitman states he was not assessed or evaluated by another provider
27 until seven days after the February 3, 2015 assault. (Doc. 129 ¶¶ 22, 24.) However,
28 Defendants submitted medical records showing that Beitman did have contact, of some

1 form, with a member of the health staff each day from February 3 to February 11.
2 (Docs. 104-1 at 6–14.)⁶

3 On February 9, 2015, Beitman submitted a Health Needs Request (HNR), in
4 which he wrote that he needed to go to the hospital to be examined, x-rayed, and treated
5 by an orthopedic physician; that he needed to continually push his cheekbone back into
6 place; that his broken rib was tearing up his back; that the facility doctor lied about
7 Beitman’s condition; and that the x-ray tech refused to x-ray his ribs. (Doc. 128-2 at 14.)
8 The response to this HNR indicated that Beitman was referred to the nurse line. (*Id.*)

9 On the morning of February 10, 2015, in response to the HNR, Beitman saw
10 Nurse Mason. (Doc. 104-1 at 10.) Beitman complained that his cheekbone crunched
11 when he ate and that he would push it back into place; that his ribs were cracking and
12 poking him; and that he had dizziness. (*Id.*) Nurse Mason took Beitman’s vitals, told him
13 that that the orbital x-rays were within normal limits, and noted that rib x-rays were
14 already scheduled. (*Id.*) Nurse Mason documented that Beitman had rib tenderness but no
15 shortness of breath was noted. (*Id.*) Nurse Mason instructed Beitman on “splinting” his
16 ribs when he coughed and not to push his face bone. (*Id.* at 11; Doc. 129 ¶ 25.)

17 On February 10, 2015, Dr. Gruenberg generated a medical record documenting his
18 review of the nurse’s notes. (Doc. 104-1 at 13; *see* Doc. 128-1 ¶ 31.)⁷ Dr. Gruenberg

19 ⁶ There is also one partially-illegible health record that Defendants submitted that
20 appears to document that Beitman saw health staff on February 17, 2015, and another
21 illegible date, but it is impossible to decipher what occurred on either date from the
medical record. (Doc. 104-1 at 15.)

22 ⁷ Beitman argues that the Court should not consider the February 10, 2015 medical
23 record generated by Dr. Gruenberg (Doc. 104-1 at 13) on the grounds that it contains
24 irrelevant and immaterial statements. (Doc. 128 ¶¶ 26–28; Doc. 128-1 ¶ 28–32.) But, a
25 court considers only relevant evidence on summary judgment, and thus, an objection as
26 to the relevance of evidence on summary judgment is “duplicative of the summary
27 judgment standard itself.” *Burch v. Regents of Univ. of Cal.*, 433 F. Supp. 2d 1110, 1119
28 (E.D. Cal. 2006). Beitman also raises a hearsay objection to a statement in the medical
record specifically relating to a radiologist’s interpretation of his x-rays. (*See* Doc. 127 at
10.) Defendants claim the radiologist’s statement is admissible as a statement made for
medical treatment or as a business record. (Doc. 130 at 3 (citing Fed. R. Evid. 803(4),
(6)).) Defendants did not establish that these rules apply. (*See id.*) Consequently, the
Court will ignore the purported statements by the radiologist in the medical record for
purposes of deciding Defendants’ Motion for Summary Judgment. *See Beyene v.*
Coleman Sec. Servs., Inc., 854 F.2d 1179, 1182 (9th Cir. 1988) (holding that party’s

1 referred to Beitman's February 9, 2015 HNR, noting that Beitman "wrote an HNR calling
2 me a liar! The Deputy Warden is aware and proper disciplinary actions will be
3 implemented."⁸ (Doc. 104-1 at 13.) In the medical note, Dr. Gruenberg assessed "left
4 orbit injury" and "rib pain," and he noted "rib series with cxr [chest x-ray] pending." (*Id.*)

5 On February 11, 2015, Beitman saw Dr. Gruenberg. (*Id.* at 14; Doc. 129 ¶ 33.)
6 Warden Bennie Rollins and Officer Lewis observed this encounter. (Doc. 104-1 at 13–
7 14.) Beitman claims that he reported to Dr. Gruenberg that he had a broken cheekbone
8 and that he moved the cheekbone back and forth to show Dr. Gruenberg. (Doc. 129 ¶ 33.)
9 Beitman asserts that Dr. Gruenberg then used his thumb and pushed Beitman's
10 cheekbone into his cheek, causing Beitman to yell in pain. (*Id.*) Beitman alleges that Dr.
11 Gruenberg commented that the bone might be broken. (*Id.*) Beitman claims that Dr.
12 Gruenberg then used his fingers on Beitman's lower ribs and felt them pop and click
13 when Beitman took a breath. (*Id.*) Beitman states that Dr. Gruenberg commented that the
14 rib might be broken or dislocated, and he informed Beitman that x-rays had been ordered.
15 (*Id.*) Beitman claims that Dr. Gruenberg refused Beitman's requests for an orthopedic
16 physician, a CT scan, or an MRI. (*Id.*)

17 In the medical record for this encounter, Dr. Gruenberg noted Beitman's reports of
18 dizziness and sinus pressure; that the left orbital contusion was healing; that the teeth
19 were intact; that there was tenderness to the left maxilla; and that there was tenderness to
20 the left rib at the T8 level. (Doc. 104-1 at 14.) He also made the following notations:

- 21 • "xrays are all wnl [within normal limits]. Read by a Radiologist";
- 22 • "orbit contusion: neg xrays as per Board Cert Radiologist";

23 failure "to lay a foundation for any exception to the hearsay rule" required that court
24 ignore hearsay evidence on summary judgment). The Court makes clear, however, that
25 this ruling does not extend to trial. Should Defendants offer the February 10, 2015
medical record at trial, Beitman will have to object for the Court to consider excluding it.

26 ⁸ Beitman raises a hearsay objection to this statement. (Doc. 129 at 9–10).
27 However, Beitman's statements are admissible under Federal Rule of Evidence
28 801(d)(2)(A). Dr. Gruenberg can testify as to what Beitman said without relying on the
medical record that the statement appears in. *Fraser v. Goodale*, 342 F.3d 1032, 1036
(9th Cir. 2003) (holding substance of evidence must be admissible but not necessarily the
form of the evidence). Therefore, the objection is overruled.

- “rib pain; contusion/sprain: xrays are neg as per Board Cert Radiologist”;
- “repeat left rib series and left orbit series next week to r/o [rule out] delayed frac[tu]re”;
- “naprosyn 500 mg po bid x 2 weeks for pain”;
- “meclizine 25 mg po q6 h prn dizziness x 2 weeks.”

(*Id.*)⁹ Defendants did not submit any x-rays or copies of radiological reports, nor are the board-certified radiologists identified by Defendants. (*See* Doc. 104-1.) There is also no evidence that the x-rays were repeated as noted on the February 11, 2015 medical record. (*See* Docs. 104; 104-1.)

Beitman claims he was taken to medical on February 12, 2015, and had x-rays taken of his face and ribs from the portable x-ray machine. (Doc. 129 ¶ 40.) According to Beitman, this was the first and only time that x-rays were taken of his ribs. (*Id.* ¶ 36.) Beitman submits one page from a two-page “Diagnostics Imaging Report,” which is dated February 12, 2015, and which shows partial results of left rib x-rays. (Doc. 128-2 at 22.) The report states that “[t]he bony ossification of the left ribs is normal,” that “[t]here is no fracture or costovertebral dislocation,” and that “[n]o pneumothorax is seen.” (*Id.*) The report concludes, “normal left rib series.” (*Id.*) This page of the “Diagnostics Imaging Report” is stamped and initialed by Dr. Gruenberg on February 12, 2015. (*Id.*)

Beitman claims he remained in the Central Detention Unit for another five weeks, during which time he did not see Dr. Gruenberg again, nor did he have any further rib or orbital x-rays performed. (Doc. 129 ¶ 41.) Beitman asserts that he showed a nurse or officer clots of blood that he spat out every day, which came from his sinuses where the injured bone damaged his sinus wall. (*Id.*) During these five weeks, Beitmen reports that his cheekbone eventually stopped moving; it stayed pushed in about 1/3 to 1/2 inch compared to the right cheekbone. (*Id.*) Beitman states that, even though the bone stopped

⁹ As noted, above, *supra* pp. 6–7 note 7, the Court does not consider any of the purported interpretations of x-rays by the radiologist for their truth as those statements would then constitute hearsay and Defendants have not established that any exception to the hearsay rule applies here.

1 moving, the bleeding from his sinuses did not stop. (*Id.*) Beitman asserts that he
2 submitted multiple HNRs reporting his symptoms, but medical staff ignored his requests.
3 (Doc. 7-1 at 4 ¶ 21.)

4 On March 18, 2015, Beitman submitted an HNR stating that he had thick clots of
5 blood still coming from his sinuses from where the cheekbone “is still puncturing the
6 area.” (Doc. 128-2 at 16.) He also wrote that the area continued to cause him dizziness.
7 (*Id.*) The HNR response indicated that Beitman was referred to the nurse line. (*Id.*)

8 On March 19, 2015, Beitman was taken to medical and seen by Nurse Ranquillo in
9 response to his HNR. (Doc. 129 ¶ 42; Doc. 104-1 at 16.) Beitman claims that he reported
10 to Nurse Ranquillo that he was still bleeding, that he showed her a clot in a tissue, and
11 that he stated that he felt medical had let his alleged fracture improperly heal out of place.
12 (Doc. 129 ¶ 42.) In the medical record for this encounter, Nurse Ranquillo documented
13 Beitman’s complaints of continued problems with his sinus cavity since the alleged blunt
14 force trauma to the left orbital area, and she noted some pain, but that there were no signs
15 of swelling or tenderness to the left orbital. (Doc. 104-1 at 16–17.)

16 On March 20, 2015, Beitman was taken to medical and seen by Nurse Sanchez.
17 (Doc. 129 ¶ 43; Doc. 104-1 at 18.) Beitman showed her another blood clot, and she took
18 his vitals. (Doc. 129 ¶ 43.) In the medical record, Nurse Sanchez noted that an assessment
19 was “deferred,” and she documented that Beitman was “cleared for transport” to another
20 yard. (Doc. 104-1 at 18.)

21 **B. ASPC-Eyman, Cook Unit**

22 Beitman was transferred to the ASPC-Eyman, Cook Unit, where Corizon was
23 responsible for providing prisoner health services. (Doc. 7 at 2; Doc. 7-1 at 4 ¶¶ 22–23.)

24 Beitman claims that he continued to suffer complications with his orbital bone,
25 including headaches, severe pain, and exophthalmos (bulging of the eye). (Doc. 129
26 ¶ 44.) On April 20, 2015, Beitman filed a medical grievance complaining that he had not
27 received proper examination, diagnosis, and treatment for a fractured cheekbone suffered
28 in the assault on February 3, 2015, and he wrote that it was obvious to a layperson that

1 his cheekbone was crushed inward and had healed improperly. (Doc. 7-1 at 14.) Beitman
2 appealed this grievance up to Director Ryan by filing a grievance appeal in May 2015.
3 (*Id.* at 12.) On July 10, 2015, Ryan denied the grievance appeal and wrote that an
4 investigation and review of the medical records showed that Beitman was seen numerous
5 times; a left orbital x-ray performed on February 5, 2015, was within normal limits; and a
6 rib x-ray performed on February 12, 2015, was “essentially normal.” (*Id.*)

7 **C. ASPC-Kingman**

8 After nine months in the Cook Unit, Beitman was moved to ASPC-Kingman, a
9 private prison facility in Kingman, Arizona that is operated by GEO Group. (Doc. 7-1 at
10 4 ¶ 23.) Beitman asserts that he was assaulted on February 1, 2016, by other prisoners
11 and suffered injuries to his right orbital/cheekbone and right jaw. (*Id.* at 5 ¶ 24.) Beitman
12 claims x-rays were done at ASPC-Kingman on February 4, 2016, and that the x-ray
13 technician told Beitman that he could see the previous fractures on Beitman’s left side.
14 (*Id.* ¶ 25.) Beitman states he was taken to Southwest Imaging in Kingman for a CT scan
15 of his skull the next day. (*Id.* ¶ 26.)¹⁰ According to Beitman, a provider submitted a
16 referral to an ear, nose, and throat (ENT) specialist, and Beitman was informed that he
17 would be taken to an ENT; however, this visit apparently never occurred. (*Id.* ¶ 27; *id.* at
18 18, 21.) Instead, Beitman claims he was placed into solitary confinement in the detention
19 unit for approximately seven weeks and then transferred. (*Id.* ¶ 29.)

20 **D. ASPC-Eyman, Cook Unit**

21 On March 22, 2016, Beitman was transferred back to the ASPC-Eyman, Cook
22 Unit, where Corizon was still responsible for providing prisoner health services. (Doc. 7-
23 1 ¶ 29) On March 24, 2016, Beitman submitted an HNR seeking follow-up treatment for
24 his fractures; however, he was not seen and did not receive treatment. (*Id.* at 21.)

25 On April 7, 2016, Beitman filed a grievance stating that he had not received
26 treatment for his fractures suffered on February 1, 2016, nor had he seen an ENT
27

28 ¹⁰ The parties did not submit any medical records, x-rays, CT scans, or
radiological reports from 2016.

1 specialist, and he requested to be seen by a maxillofacial specialist. (*Id.*) Beitman
2 appealed this grievance up to Director Ryan by filing a grievance appeal in June 2016.
3 (*Id.* at 18.) On January 5, 2017, Ryan denied the appeal and wrote that an investigation
4 showed that facial x-rays performed on February 4, 2016, showed no evidence of acute
5 fractures and a CT scan performed on February 5, 2016, showed non-displaced fractures
6 of the lateral wall of the right orbit as well as the walls of the right maxillary sinus. (*Id.*)
7 Ryan wrote that a referral was made to an ENT specialist; however, Beitman was
8 transferred before action was taken, and since his arrival to the Cook Unit, he had had
9 medical encounters, and that it was determined that an outside consult is not medically
10 necessary. (*Id.*)

11 **E. ASPC-Florence, South Unit**

12 At some time in 2017, Beitman was transferred to the ASPC-Florence, South Unit.
13 (*See* Doc. 7-1 at 18; Doc. 1-1 at 1.)

14 Beitman claims he saw Nurse Maurice Owiti on March 22, 2019, and that Owiti
15 examined Beitman's maxillary orbital area and eyes and told Beitman that the prison
16 health care provider would not treat fractured orbitals due to the cost. (Doc. 129 ¶ 44.)
17 Owiti submitted a consult request for Beitman to see an optometrist, and the reason for
18 the request was "left eye pressure from deformed socket causing headaches and blurry
19 vision." (Doc. 128-2 at 18.)

20 On April 20, 2019, Beitman saw Dr. Daniel Bray, the on-site optometrist.
21 (Doc. 128-2 at 19.) The medical record for this encounter documents that Bray "referred
22 [Beitman] to ophthal[mologist] for eval. of lag ophthalmos [inability to completely close
23 eyelids completely] due to orbital fracture." (*Id.*) On May 21, 2019, Nurse Practitioner
24 Hahn submitted a consult request for Beitman to see an ophthalmologist pursuant to Dr.
25 Bray's referral. (*Id.* at 20.)

26 Beitman claims that, in July 2019, Beitman saw an ophthalmologist in Phoenix,
27 and the ophthalmologist confirmed that Beitman suffered exophthalmos, headaches, and
28 incomplete eye closure due to an orbital fracture. (Doc. 129 ¶ 46.)

1 **IV. DR. GRUENBERG**

2 **A. Legal Standard**

3 To support a medical care claim under the Eighth Amendment, a prisoner must
4 demonstrate “deliberate indifference to serious medical needs.” *Jett v. Penner*, 439 F.3d
5 1091, 1096 (9th Cir. 2006) (citing *Estelle v. Gamble*, 429 U.S. 97, 104 (1976)). There are
6 two prongs to the deliberate-indifference analysis: an objective standard and a subjective
7 standard.

8 First, a prisoner must show a “serious medical need.” *Id.* (citations omitted). A
9 “‘serious’ medical need exists if the failure to treat a prisoner’s condition could result in
10 further significant injury or the ‘unnecessary and wanton infliction of pain.’” *McGuckin*
11 *v. Smith*, 974 F.2d 1050, 1059–60 (9th Cir. 1992) (internal citation omitted), *overruled on*
12 *other grounds by WMX Techs., Inc. v. Miller*, 104 F.3d 1133, 1136 (9th Cir. 1997) (en
13 banc). Examples of indications that a prisoner has a serious medical need include “[t]he
14 existence of an injury that a reasonable doctor or patient would find important and worthy
15 of comment or treatment; the presence of a medical condition that significantly affects an
16 individual’s daily activities; or the existence of chronic and substantial pain.” *Id.* at 1059–
17 60.

18 Second, a prisoner must show that the defendant’s response to that need was
19 deliberately indifferent. *Jett*, 439 F.3d at 1096. “Prison officials are deliberately
20 indifferent to a prisoner’s serious medical needs when they ‘deny, delay or intentionally
21 interfere with medical treatment.’” *Wood v. Housewright*, 900 F.2d 1332, 1334 (9th Cir.
22 1990) (quoting *Hutchinson v. United States*, 838 F.2d 390, 394 (9th Cir. 1988)).
23 Deliberate indifference may also be shown where prison officials fail to respond to a
24 prisoner’s pain or possible medical need. *Jett*, 439 F.3d at 1096. “In deciding whether
25 there has been deliberate indifference to an inmate’s serious medical needs, [courts] need
26 not defer to the judgment of prison doctors or administrators.” *Colwell v. Bannister*, 763
27 F.3d 1060, 1066 (9th Cir. 2014) (quoting *Hunt v. Dental Dep’t*, 865 F.2d 198, 200 (9th
28 Cir. 1989)).

1 Even if deliberate indifference is shown, to support an Eighth Amendment claim,
2 the prisoner must demonstrate harm caused by the indifference. *Jett*, 439 F.3d at 1096;
3 *see Hunt*, 865 F.2d at 200 (delay in providing medical treatment does not constitute
4 Eighth Amendment violation unless delay was harmful).

5 **B. Discussion**

6 **1. Serious Medical Need**

7 Defendants suggest that there was no serious medical need because, according to
8 the medical records, neither Beitman's face nor his ribs were fractured; therefore, Dr.
9 Gruenberg cannot be liable for failing to treat "non-existent conditions." (Doc. 103 at 4.)
10 Defendants assert that Dr. Gruenberg "relied on the[] radiological reports in determining
11 that [Beitman] had no facial or rib fractures caused by the February 3, 2015 altercation."
12 (*Id.* at 2). But, Defendants did not proffer any of the x-rays or radiological reports, and, as
13 noted above, *supra* pp. 6–7 note 7, Defendants rely on hearsay statements attributed to an
14 unnamed radiologist within the medical records. (*See* Doc. 104; Doc. 104-1 at 2–3.)
15 Defendants submit no other evidence to support their assertion that Beitman did not
16 suffer fractures or have some other serious medical need. (*See* Doc. 104 at 1–2.)

17 Although Defendants assert that "[Beitman]'s entire claim against CCS and [Dr.]
18 Gruenberg rests on his assertion that his face and ribs were fractured during the
19 altercation on February 3, 2015," (Doc. 103 at 4–5), that is not correct. Beitman could
20 establish a serious medical need without suffering fractures. *See McGuckin*, 974 F.2d at
21 1059–60.

22 Beitman has established that there is a triable issue of fact as to whether his
23 injuries from the February 3, 2015 assault was a serious medical need. Beitman asserts
24 that after the February 3, 2015 assault, he was found partially conscious and taken to
25 medical for treatment. (Doc. 129 ¶ 4.) Beitman claims that he was bleeding from his nose
26 and down his throat, that he could feel his cheekbone moving and crunching when he
27 touched the side of his face, that he was dizzy and nauseous, that he had difficulty
28 breathing, that he had a sharp rib pain every time he took a breath, that he was in severe

1 pain, and that he was informed that x-rays could not be taken until the swelling went
2 down. (*Id.* at 3–4 ¶¶ 9–11.) The medical records also document that Beitman had an
3 orbital hematoma, eye orbital ecchymosis, and rib tenderness. (Doc. 104-1 at 6.) Beitman
4 claims that he continued to suffer severe pain, he had ongoing rib tenderness, his
5 cheekbone continued to crunch and move when touched, he continued to bleed out of his
6 nose, and he had problems with sinus pressure and his sinus cavity. (*See, e.g., id.* at 14,
7 16; Doc. 129 ¶¶ 11, 19, 25, 41; Doc 128 ¶¶ 41–42.) And, Beitman claims that he had
8 weeks of severe pain. (Doc. 129 ¶ 41.) In fact, medical staff gave Beitman pain
9 medication. (Doc. 104-1 at 14.) The evidence therefore supports a finding that Beitman
10 not only suffered through chronic and substantial pain but also that his injuries could be
11 seen as worthy of comment or treatment by a reasonable doctor or patient. *See McGuckin*,
12 974 F.2d at 1059–60, 1062 (“There is no doubt that [the inmate]’s pain and medical
13 condition demonstrated his ‘serious medical need.’”). Consequently, there is a genuine
14 dispute of material fact as to whether Beitman had a serious medical need, especially
15 given that, at this stage, the Court reviews the evidence in the light most favorable to
16 Beitman. *See Anderson*, 477 U.S. at 249.

17 Beitman also offers evidence in support of his claims that he suffered fractures,
18 which may also constitute a serious medical need. *See Madrid v. Gomez*, 889 F. Supp.
19 1146, 1200–01 (N.D. Cal. 1995). First, Beitman asserts that NP Ramirez and Dr.
20 Gruenberg examined Beitman and that each told Beitman that he might have suffered
21 fractures. (Doc. 128 ¶ 11; Doc. 128-1 ¶ 33.) In fact, the medical record, dated February
22 11, 2015, instructed that Beitman’s ribs and face be x-rayed again to rule out a delayed
23 fracture. (Doc. 104-1 at 14.) No evidence offered by Defendants confirms that these x-
24 rays occurred. (*See* Doc. 104; Doc. 104-1). Also, Beitman avers that in 2016, an x-ray
25 technician informed him that skull x-rays showed a previous left orbital fracture. (Doc. 7-
26 1 at 5 ¶ 25.) And, Beitman offers documentation from Dr. Bray, which states that
27 Beitman should be referred for evaluation of “lag ophthalmos due to orbital fracture.”
28 (Doc. 128-2 at 19). Finally, Beitman states that he was in severe pain for a significant

1 period of time after the February 3, 2015 altercation and that he has facial disfigurement
2 potentially consistent with facial fractures. (Doc. 129 ¶ 41; Doc. 7 at 4.) Viewing the
3 record in the light most favorable to Beitman, as the Court must, there is a triable issue as
4 to whether Beitman suffered fractures.¹¹

5 In short, there is a genuine dispute of material fact as to whether Beitman
6 sustained fractures or whether he at least suffered through weeks of severe pain. Either
7 scenario is sufficient for a jury to find a serious medical need. *See McGuckin*, 974 F.2d at
8 1059–60. Accordingly, there is a triable issue of fact as to whether Beitman had a serious
9 medical need following the February 3, 2015 assault.

10 **2. Deliberate Indifference**

11 The analysis therefore turns to the deliberate-indifference prong, and the initial
12 question is whether Dr. Gruenberg knew of Beitman’s serious medical need. *See Jett*, 439
13 F.3d at 1097. The medical record documented Beitman’s injuries following the February
14 3, 2015 assault, and in his declaration, Dr. Gruenberg avers that Beitman suffered injuries
15 that caused him to order orbital and rib x-rays. (Doc. 104-1 at 2 ¶¶ 8–9, 11.) Beitman
16 submitted an HNR asking to go to the hospital to see a specialist and explaining that he
17 had to continually push his cheekbone back into place and that his broken rib was
18 “tearing up [his] back.” (Doc. 7-1 at 13.) Dr. Gruenberg’s own documentation in the
19 medical record indicates he was aware of the HNR. (Doc. 104-1 at 13.) And Beitman

21 ¹¹ Beitman’s materials include an email, dated February 12, 2015, that appears to
22 be related to his x-rays, that states Beitman had a “[n]ormal left rib series” based on
23 results that showed “[t]he bony ossification of the left ribs is normal” and that “[t]here is
24 no fracture or costovertebral dislocation.” (Doc. 128-2 at 22.) However, Defendants did
25 not offer this evidence or rely on it in the Motion for Summary Judgment. (Doc. 103;
26 Doc. 104; Doc. 104-1.) It is *Defendants’* burden—as the movants—to establish that there
27 are no genuine disputes of material fact by “citing to particular parts of materials in the
28 record” or “showing that the materials cited do not establish the absence or presence of a
genuine dispute[] or that an adverse party cannot produce admissible evidence to support
the fact.” Fed. R. Civ. P. 56(c)(1). Moreover, Defendants broadly asserted that they were
entitled to summary judgment because “CCS and Dr. Gruenberg relied on the
radiological findings in determining [Beitman] had not suffered fractures.” (Doc. 130 at
2.) However, as noted, evidence in the record supports Beitman’s claims of a facial
fracture, which establishes a genuine dispute of material fact as to whether Beitman
suffered fractures. The Court will not parse out distinct issues—such as whether there
was a facial fracture but not a rib fracture—where Defendants chose not to do so.

1 claims that, during the approximately five weeks Beitman was held in detention after the
2 assault, he filed multiple HNRs reporting his symptoms and seeking medical attention.
3 (Doc. 7-1 at 4 ¶ 21.) The inference can be made that Dr. Gruenberg was aware of these
4 HNRs. *See Jett*, 439 F.3d at 1094, 1097 (concluding that the plaintiff, the party opposing
5 summary judgment, was entitled to an inference that the defendant prison doctor was
6 aware of the medical slips the plaintiff continued to submit asking to be sent to a
7 specialist for treatment for a fractured thumb). In fact, medical records, signed by Dr.
8 Gruenberg, indicated that Beitman was prescribed pain medication. (*See, e.g.*, Doc. 104-1
9 at 14.) On this record, a reasonable jury could find that Dr. Gruenberg was aware of
10 Beitman’s serious medical need following the February 3, 2015 assault.

11 Next, the Court considers Dr. Gruenberg’s response to Beitman’s alleged medical
12 need. Defendants argue that Dr. Gruenberg sent Beitman for x-rays and relied on the
13 radiological findings in determining that Beitman did not suffer any fractures; thus, Dr.
14 Gruenberg cannot be liable for deliberate indifference for providing no further treatment
15 to Beitman for his complaints based on these findings. (Doc. 103 at 4–5; Doc. 130 at 2–
16 3.) Defendants claim that, even if the Court assumes that Beitman “is able to present
17 evidence that he actually suffered from the fracture of which he complains, his claim that
18 [Dr.] Gruenberg (and through him CCS) was deliberately indifferent to his medical needs
19 fails as a matter of law.” (Doc. 103 at 4–5.) From there, Defendants assert that “[t]here
20 was no ‘purposeful act’ or failure to respond to [Beitman]’s requests for medical care” as
21 “[Dr.] Gruenberg sent [Beitman] for diagnostic x-rays[] and relied on the results of those
22 x-rays, which showed no fractures.” (*Id.* at 5.)

23 But, again, Defendants did not offer evidence of the x-rays and the Court cannot
24 consider the hearsay evidence within the medical records relating to the radiologist’s
25 interpretation of the x-rays that Defendants cite, *see supra* pp. 6–7 note 7. As such,
26 Defendants have not established that it properly responded to Beitman’s serious medical
27 by merely relying on the x-rays that Defendants failed to offer.

1 Further, as noted, the record supports Beitman’s claims that he had a serious
2 medical need—whether or not Beitman suffered fractures. There is evidence that Beitman
3 suffered severe pain in his left orbital bone, that he had frequent bleeding from his
4 sinuses, that his cheekbones continued to crunch and move when touched, that he had
5 sinus cavity problems, and that he had rib and back pain so severe that he asked to have
6 his rib removed. (Doc. 7-1 at 4 ¶¶ 19, 21; Doc. 129 ¶¶ 30, 31, 33, 41–44; Doc. 104-1 at
7 14, 16.) Beitman indicated that he was suffering from pain and symptoms in multiple
8 HNRs; however, Dr. Gruenberg reportedly did not respond to Beitman’s request. (Doc. 7-
9 1 at 4 ¶¶ 19, 21.) Indeed, Defendants concede that Dr. Gruenberg and CSS “provided no
10 further treatment to [Beitman] for his complaints” after medical staff took x-rays of
11 Beitman in February 2015. (*See* Doc. 130 at 2.) And, a jury could find that merely giving
12 Beitman pain medication was not enough to treat Beitman’s injuries should it find
13 Beitman had a serious medical need, especially if the jury finds that further treatment was
14 denied to save money as Beitman claims. *See City of Revere v. Mass. Gen. Hosp.*, 463
15 U.S. 239, 245 (1983); *Garbarini v. Ulit*, No. 1:14-CV-01058-AWI, 2015 WL 2165396, at
16 *8 (E.D. Cal. May 7, 2015); *Villanueva v. Franklin Cty. Sheriff’s Office*, 849 F. Supp. 2d
17 186, 191 (D. Mass. 2012).

18 In short, Beitman’s claim is that Dr. Gruenberg failed to properly treat his injuries
19 or send him to the hospital. Taking consideration of all the facts, a reasonable jury could
20 find that Dr. Gruenberg exhibited deliberate indifference by failing to treat Beitman’s
21 possible fractures, pain, and ongoing complications. *See Jett*, 439 F.3d at 1096. If
22 evidence presented at trial establishes a serious medical need, a jury could find that Dr.
23 Gruenberg knew of and disregarded or failed to respond to that serious medical need. *See*
24 *Farmer*, 511 U.S. at 837 (stating an official is liable for an Eighth Amendment violation
25 if the “official knows of and disregards an excessive risk to inmate health”); *McGuckin*,
26 974 F.3d at 1060 (holding that deliberate indifference established where a defendant
27 “purposefully ignore[s] or fail[s] to respond to a prisoner’s pain or possible medical
28 need”); *see also Jett*, 439 F.3d at 1096 (reversing summary judgment ruling for

1 defendants after concluding that the plaintiff presented sufficient evidence to establish
2 defendants were deliberately indifferent to his need to have his fractured thumb set and
3 cast).

4 **3. Harm Caused by the Indifference**

5 The final question in the Eighth Amendment analysis is whether Beitman suffered
6 harm as a result of Dr. Gruenberg’s deliberate indifference. *See Jett*, 439 F.3d at 1096;
7 *Hunt*, 865 F.2d at 200. Defendants do not address this element except to assert that the x-
8 rays showed no fractures. (*See Doc. 103 at 4–5.*) However, as discussed, there is a
9 material dispute of fact as to whether Beitman suffered fractures. If the jury finds that
10 Beitman had fractures, there could be a finding of harm from Dr. Gruenberg’s failure to
11 treat them. *See Jett*, 439 F.3d at 1098.

12 However, even if Beitman cannot show fractures, Beitman could still have been
13 harmed. Beitman avers that during the five weeks he remained in detention, he continued
14 to suffer pain and to bleed from his sinuses, and, eventually, his cheekbone stopped
15 moving but remained pushed inward and that he now has facial disfigurement. (Doc. 129
16 ¶ 41; Doc. 7 at 4.) Beitman also asserts that since the 2015 assault, he has suffered pain,
17 constant pressure headaches, exophthalmos, and incomplete eye closure. (Doc. 129 ¶ 44.)
18 *See S. Cal. Housing Rights Ctr. v. Los Feliz Towers Homeowners Ass’n*, 426 F. Supp. 2d
19 1061, 1070 (C.D. Cal. 2005) (noting a declarant has personal knowledge of his or her
20 own symptoms). Beitman’s injuries and pain could be found to constitute harm sufficient
21 to support an Eighth Amendment claim. *See Estelle*, 429 U.S. at 103 (holding that the
22 Eighth Amendment applies even to “less serious cases, [where] denial of medical care
23 may result in pain and suffering which no one suggests would serve any penological
24 purpose”); *Jett*, 439 F.3d at 1098 (stating deformity caused by delay in treating injury
25 was harmful to inmate); *McGuckin*, 974 F.2d at 1060 (concluding that pain and anguish
26 suffered by prisoner constituted harm sufficient to support a § 1983 action).

1 **4. Conclusion**

2 Accordingly, summary judgment will be denied as to Dr. Gruenberg. There are
3 material questions of fact as to each element of Beitman’s Eighth Amendment claim
4 against Dr. Gruenberg. Therefore, Dr. Gruenberg has not shown entitlement to summary
5 judgment.

6 **V. CCS**

7 **A. Legal Standard**

8 To support a § 1983 claim against a private entity performing a traditional public
9 function, such as providing medical care to prisoners, a plaintiff must allege facts to
10 support that a policy, decision, or custom promulgated or endorsed by the private entity
11 violated the prisoner’s constitutional rights. *See Tsao v. Desert Palace, Inc.*, 698 F.3d
12 1128, 1138–39 (9th Cir. 2012) (extending the “official policy” requirement for municipal
13 liability under *Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658, 691 (1978), to private entities
14 acting under color of law). Under *Monell*, a plaintiff must show: (1) he suffered a
15 constitutional injury; (2) the entity had a policy or custom; (3) the policy or custom
16 amounted to deliberate indifference to the plaintiff’s constitutional right; and (4) the
17 policy or custom “was the moving force behind the constitutional injury.” *Mabe v. San*
18 *Bernardino Cty., Dep’t of Pub. Soc. Servs.*, 237 F.3d 1101, 1110–11 (9th Cir. 2001)
19 (internal quotation marks and citation omitted).

20 **B. Discussion**

21 **1. Constitutional Injury**

22 As set forth above, to support an Eighth Amendment violation, a prisoner must
23 demonstrate a serious medical need and deliberate indifference to that need. *Jett*, 439
24 F.3d at 1096.

25 Beitman claims that CCS failed to provide proper specialist treatment for his
26 alleged fractures following the February 3, 2015 assault and that, through the actions and
27 inactions of its staff, CCS engaged in a pattern and practice of denying proper diagnosis
28 and treatment for the purpose of limiting or avoiding costs of such treatment, which

1 caused Beitman to suffer unnecessary pain and disfigurement. (Doc. 7 at 4; Doc. 129
2 ¶ 41.) Beitman asserts that CCS medical staff were aware of Beitman’s initial injuries
3 following the February 3, 2015 assault; the treating provider failed to treat possible
4 fractures; Beitman filed multiple HNRs seeking medical treatment for continued pain,
5 bleeding from his sinuses, and a fragile and moving cheekbone; medical staff ignored
6 Beitman’s HNRs for five weeks; and, after the purported negative x-ray results, CCS
7 provided no further treatment—beyond giving him pain relief medication—in response to
8 Beitman’s requests for care. (Doc. 7-1 at 4 ¶ 21; Doc. 129 ¶¶ 41–42; Doc. 130 at 2.) A
9 reasonable jury could find that the CCS medical staff’s failure to respond to Beitman’s
10 HNRs and failure to provide any treatment for five weeks despite his reported symptoms
11 and pain constituted a failure to respond to Beitman’s pain or possible medical need and
12 amounted to deliberate indifference. *Jett*, 439 F.3d at 1096.

13 **2. Remaining *Monell* Elements**

14 In their Motion, Defendants fail to address whether CCS can be subjected to
15 liability under *Monell* based on a policy or custom that caused Beitman’s alleged injuries.
16 (See Doc. 103.) Instead, Defendants’ argument for summary judgment as to CCS is that
17 there is no evidence that Beitman suffered any fractures or that CCS was deliberately
18 indifferent to Beitman’s medical needs. (*Id.*) Whether Beitman suffered fractures is a
19 disputed question of fact.

20 Because Defendants present no argument for summary judgment on the *Monell*
21 claim against CCS, they fail to meet their initial burden to establish an absence of
22 evidence as to the existence of a policy or practice that was the moving force behind the
23 alleged constitutional violation here. (Doc. 103); see Fed. R. Civ. P. 56(c)(1); *Nissan*, 210
24 F.3d at 1102 (noting that summary judgment movant must “either produce evidence
25 negating an essential element of” the claim at issue or show that the plaintiff does “not
26 have enough evidence of an essential element to carry [his] ultimate burden of persuasion
27 at trial”). Beitman was not obligated to respond to arguments not raised in Defendants’
28 Motion. See *Nissan*, 210 F.3d at 1102–03; *Greene v. Solano Cty. Jail*, 513 F.3d 982, 990

(9th Cir. 2008) (stating a pro se plaintiff cannot be expected to anticipate and prospectively oppose arguments that a defendant does not make). Consequently, there is a question of fact as to whether CCS is liable for deliberate indifference based on a policy or practice of denying proper diagnosis and treatment, and thus, summary judgment as to CCS will be denied.

VI. RYAN AND CORIZON

As noted, Ryan and Corizon joined the summary judgment motion filed by Dr. Gruenberg and CCS. (Docs. 131; 140.) Because the summary judgment motion for Dr. Gruenberg and CCS was limited to asserting that Beitman had no serious medical need, or, in the alternative, that Dr. Gruenberg's response was adequate, the Court's summary judgment ruling applies to both Ryan and Corizon based on the same reasoning that the Court already articulated. In other words, the Motion for Summary Judgment filed by Defendants Dr. Gruenberg and CCS (Doc. 103) did not show that Ryan and Corizon are entitled to to summary judgment. Summary judgment as to Ryan and Corizon will be denied.

VII. SUBSTITUTION IN OFFICIAL CAPACITY CLAIM AGAINST RYAN

Beitman has sued Ryan in his official capacity. *Supra* p. 2 note 4; (Doc. 7 at 6–7 (“Plaintiff further seeks . . . medical treatment to re-fracture and repair the damage to Plaintiff's face caused by Defendants' actions and inactions.”).) An official-capacity suit is “another way of pleading an action against an entity of which an officer is an agent.” *Kentucky v. Graham*, 473 U.S. 159, 165 (1985); *Monell*, 436 U.S. at 690, n.55. Ryan was director of the ADC at the time Beitman filed suit against Defendants. Therefore, the suit against Ryan in his official capacity is a suit against the ADC.

Ryan is no longer the ADC Director. Under Federal Rule of Civil Procedure 25(d), when an officer sued in his or her official capacity dies, resigns, or otherwise ceases to hold office while the action is pending, “[t]he officer's successor is automatically substituted as a party.” Fed. R. Civ. P. 25(d). David Shinn is the current ADC Director, and he is the proper official to respond to injunctive relief. *See* Ariz. Rev. Stat. § 31-

201.01(D). Accordingly, David Shinn will be substituted as the defendant for Beitman's official capacity claim for injunctive relief.¹² However, Beitman's claim against Ryan in his personal capacity will go forward.

VIII. CONCLUSION

IT IS ORDERED:

(1) The Clerk of Court shall correct the caption on the docket from "Correct Clear Solutions" to "Correct *Care* Solutions, et al."¹³

(2) The reference to the Magistrate Judge is withdrawn as to Defendants' Motion for Summary Judgment (Doc. 103.)

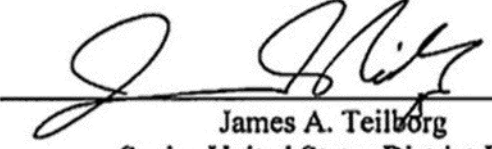
(3) Defendants' Motion for Summary Judgment (Doc. 103) is **denied** as to all defendants.¹⁴

(4) David Shinn is substituted as defendant for Plaintiff's official capacity claim for injunctive relief.

(5) This action is referred to Magistrate Judge Eileen S. Willett to conduct a settlement conference.

(6) Defense counsel must arrange for the relevant parties to jointly call Magistrate Judge Willett's chambers at (602) 322-7620 within 14 days to schedule a date for the settlement conference.

Dated this 17th day of March, 2020.


James A. Teilborg
Senior United States District Judge

¹² Ryan remains a defendant as to the individual capacity claim against him for damages.

¹³ The Complaint wrongly asserted a claim against "Correct Care Solutions" rather than "Correct *Clear* Solutions." (Doc. 1.)

¹⁴ Beitman raised other objections in his various filings relating to the Motion for Summary Judgment (Doc. 103). The issues Beitman raised in these objections did not affect the Court's analysis. Thus, the objections are overruled as moot without prejudice to Beitman raising them again at trial, if appropriate.